



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 29 2017

REPLY TO THE ATTENTION OF:  
WQ-16J

Tony Swader, Administrator  
Grand Portage Trust Lands  
P.O. Box 428  
Grand Portage, Minnesota 55606

Dear Mr. Swader:

On May 9, 2017, the United States Environmental Protection Agency received the Grand Portage Band of Lake Superior Chippewa's (hereinafter, "the Tribe's") water quality standards (WQS) three-year review. This review is consistent with the Clean Water Act (CWA) requirement that states/tribes hold public hearings for reviewing and, as appropriate, updating WQS at least every three years (i.e., the triennial review). The objective of this requirement is to ensure that WQS reflect current science and public policy.

EPA has reviewed the information submitted in support of the Tribe's revised WQS and, pursuant to section 303(c) of the CWA and Federal regulations at 40 CFR 131.21, is pleased to approve the provisions identified in the following sections of this letter, subject to completion of section 7 consultation under the Endangered Species Act (ESA).

As required under section 7 of the ESA and Federal regulations at 50 CFR Part 402, EPA evaluated whether approval of the Tribe's revised WQS would affect Federally-listed threatened or endangered species or designated critical habitat. As described in EPA's biological evaluation, EPA determined that the action may affect, but is not likely to adversely affect, one or more listed aquatic, aquatic-dependent, or wetland species. Furthermore, EPA determined that the action will not destroy or adversely modify designated critical habitat.

To date, EPA has initiated, but not completed, consultation with the U.S. Fish and Wildlife Service on the approved WQS revisions. EPA has determined that this approval action does not violate section 7(d) of the ESA, which prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives. EPA concluded, as described in the record, that there are not impacts of concern during the interim period until consultation is completed.

#### APPROVED STANDARDS

**Ammonia:** EPA approves the ammonia criteria as scientifically defensible, protective of designated uses, consistent with EPA criteria recommendations published pursuant to section 304(a) of the CWA, and the Federal regulations at 40 CFR 131.11 and 40 CFR 132.4(g)(1).

**Nutrients:** EPA approves the narrative nutrient criteria, consistent with the Federal regulations at 40 CFR 131.11(b)(2): "In establishing criteria, States should establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria."

**Biocriteria:** EPA approves the narrative biological criteria in sections A and B, consistent with the Federal regulations at 40 CFR 131.11(b)(2): "In establishing criteria, States should establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria."

## NO ACTION

**Biocriteria, Section C:** EPA takes no action on section C. *Implementation* based upon EPA's determination that this section is not a WQS subject to EPA review and approval under section 303(c) of the CWA.

## REVIEW DEFERRED PENDING ACTION BY THE TRIBE

**Bacteria Criteria and Modifications to Recreation Designated Use:** The Tribe and EPA have agreed that EPA will not act on deletion of the three subcategories of primary contact recreation designated use, deletion of the previously approved bacteria criteria based upon frequency of use, and will take no action on the updated bacteria criteria, with the understanding that the Tribe intends to withdraw these items and resubmit them to EPA with corrections and clarifications.

## CONCLUSION

EPA congratulates you and your staff on successfully addressing WQS program requirements. EPA has approved the majority of the Tribe's triennial review updates and is working with your staff to revise rules on the Tribe's recreational use and bacteria criteria on a schedule that is most convenient for the Tribe. If you or your staff have any questions regarding our final action to approve the Tribe's WQS, or the triennial review process, please contact Kathleen Mayo of my staff at (312) 353-5592 or by email at [mayo.kathleen@epa.gov](mailto:mayo.kathleen@epa.gov).

Sincerely,



Christopher Korleski  
Director, Water Division

cc: Margaret Watkins, Grand Portage Water Resources Specialist



**EPA's Review of the Water Quality Standards Triennial Review for the  
Grand Portage Band of the Minnesota Chippewa Tribe  
Under Section 303(c) of the Clean Water Act  
WQSTS #TR2017-763**

**Date: SEP 29 2017**

**I. Executive Summary:**

Section 303(c)(1) of the Clean Water Act (CWA) requires that, every three years, states and authorized tribes hold public hearings for reviewing and, as appropriate, updating water quality standards (WQS) (i.e., the "triennial review"). The objective of this requirement is to ensure that state/tribal WQS reflect current science and public policy. On May 9, 2017, the U.S. Environmental Protection Agency received the WQS triennial review submission from the Grand Portage Band of the Minnesota Chippewa Tribe (the Tribe). The Tribe worked with EPA on the triennial review spanning from 2015 to 2017, and has requested approval of ammonia criteria, nutrient criteria and biological criteria. The Tribe also revised its recreation use and associated bacteria criteria during this triennial review; EPA expects that the Tribe will withdraw these revisions to make corrections and clarifications and re-submit them for EPA review in the future.

As required under section 7 of the Endangered Species Act (ESA) and federal regulations at 50 CFR Part 402, EPA is required to consult with the U.S. Fish and Wildlife Service (FWS) on any action taken by EPA that may affect federally-listed threatened or endangered species or their critical habitat. EPA evaluated the potential impacts of its approval of the Tribe's updated narrative criteria on federally-protected species and has determined that approval of these criteria will have no effect on the one listed species, the northern long-eared bat. Approval of the Tribe's newly added ammonia criteria is expected to have beneficial indirect impacts on the northern long-eared bat.

Consistent with the "EPA Policy on Consultation and Coordination with Indian Tribes," EPA evaluated whether approval of the WQS revisions made during the triennial review may affect the interests of other federally-recognized tribes. EPA concluded that approval of the Tribe's revised WQS will not impact other tribes' interests and that, therefore, tribal consultation is unnecessary.

Per 40 CFR 131.5(a), EPA "is to review and to approve or disapprove State-adopted water quality standards." Consistent with federal regulations at 40 CFR 131.21, new or revised WQS do not become effective for CWA purposes until they are approved by EPA. EPA has determined that the Tribe's triennial review updates for ammonia, nutrients, and Sections A and B of the biological criteria are consistent with the relevant requirements of the CWA and federal regulations at 40 CFR 131 and 40 CFR 132 and therefore approves these WQS revisions resulting from the Tribe's triennial review. No action will be taken on the Tribe's bacteria criteria or on Section C of its biological criteria.

**II. Documents Included in the Submittal:**

- Transmittal letter from the Tribe to EPA, dated April 27, 2017, and received on May 9, 2017;

- Certification Statement from the Tribe's legal counsel, Sara K. Van Norman, titled "Grand Portage Band of Chippewa Water Quality Standards Triennial Review: Adopting Ammonia, Biological, Nutrient, and Revised Recreational Criteria for Grand Portage Water Quality Standards" (submitted April 27, 2017);
- Grand Portage Reservation WQS with header "Grand Portage Reservation Water Quality Standards with proposed recreation, nutrient, biological, and ammonia criteria. January 26, 2017, with revisions based on EPA comments March 30, 2017";
- Supporting Information for Grand Portage Proposed Nutrient Criteria;
- Tribal Council Resolution No. 06-17, titled "Adopting Ammonia, Biological, Nutrient, and Revised Recreational Criteria for Grand Portage Water Quality Standards";
- Newspaper Public Notice, published 1/28/17, 2/4/17, 2/11/17, 2/18/17, 2/25/17 and 3/4/17;
- Email notification to Great Lakes States and Tribes, dated January 27, 2017;
- EPA Comments on Grand Portage Tribe's Triennial Review, dated March 14, 2017; and
- Responsiveness Summary for the 2017 Grand Portage WQS Triennial Review.

### **III. Clean Water Act (CWA) Sections 101(a)(2)/303(c)(2) and the Regulatory Requirements at 40 CFR Parts 131/132 Review**

#### **A. EPA's Authority for Final Action on the Tribe's Triennial Review**

Section 101(a)(2) of the CWA specifies that "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water" be achieved. Section 303(c)(2) of the CWA requires that WQS shall protect the public health and shall take into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational, agricultural, industrial, and navigational purposes. EPA is required to review new and revised WQS submitted by states and tribes. EPA may take the following actions on new and revised WQS:

- **Approval.** Where EPA has concluded that the new or revised WQS are consistent with the CWA and federal regulations and that they will not affect listed species, or are otherwise not subject to ESA consultation.
- **Approval subject to ESA consultation.** Where EPA has concluded that the new or revised WQS are consistent with the CWA and federal regulations and that they may affect listed species (including beneficial effects), but that consultation is not concluded.
- **Disapproval.** Where EPA has concluded that the new or revised WQS are not consistent with the CWA and federal regulations.
- **No EPA action.** Where EPA has concluded that new or revised WQS are not WQS, or are not revisions to the state/tribe WQSs and, therefore, are not required to be reviewed under section 303(c) of the CWA.

#### **B. EPA Rationale for Final Action on The Tribe's New/Revised Criteria**

**I. Ammonia Criteria** - The ammonia criteria equations and values submitted by the Tribe are consistent with EPA's most recent 2013 ammonia criteria update under CWA section 304(a). EPA published the final national recommended water quality criteria for the protection of aquatic life from the toxic effects of ammonia in freshwater (EPA 2013). EPA's 2013 ammonia criteria



reflect new data on sensitive freshwater mussels and snails, and incorporate scientific views EPA received on its draft 2009 criteria.

Ammonia is produced for commercial fertilizers and other industrial applications. Natural sources of ammonia include the decomposition or breakdown of organic waste matter, gas exchange with the atmosphere, forest fires, animal and human waste, and nitrogen fixation processes. Ammonia can enter the aquatic environment via direct means such as municipal effluent discharges and the excretion of nitrogenous wastes from animals, and indirect means such as nitrogen fixation, air deposition, and runoff from agricultural lands (EPA 2013). The Tribe has no industrial or agricultural sources of ammonia within its Reservation boundaries, however, the Grand Portage Wastewater Treatment Facility discharge is the basis for inclusion of ammonia criteria within the Tribe's triennial review.

The Tribe adopted both of EPA's acute criteria equations (one for when *Oncorhynchus* species are present and one for where *Oncorhynchus* species are absent) to protect aquatic organisms from immediate effects, such as mortality. The Tribe also adopted EPA's chronic criterion; it is also included in the triennial review submittal to protect against the long-term effects of ammonia on reproduction, growth and survival of aquatic organisms. All magnitude, duration and frequency statements are identical to EPA's recommendations. Also included in the submittal are the tables from the EPA criteria document showing calculated values based upon various temperature and pH inputs. The Tribe includes a statement that allows for site-specific criteria to be calculated when there are demonstrated differences in the sensitivity of species present in a particular lake or river segment than those that were used to develop the national criteria.

- ❖ **EPA APPROVAL ACTION:** EPA approves the ammonia criteria as scientifically defensible, protective of designated uses, consistent with EPA CWA Section 304(a) recommendations, as well as the regulations at 40 CFR 131.11 and 40 CFR 132.4(g)(1). Any site-specific criteria calculated based upon differences between the sensitivity of species present in a Reservation water and those that were used to develop EPA's ammonia criteria would need to be separately submitted to EPA for review and approval under Section 303(c) of the CWA.

**2. Bacteria Criteria** – During its triennial review, the Tribe deleted three subcategories of the primary contact recreation designated use based upon frequency of use - high intensity, moderate intensity and infrequent use. The remaining language, unchanged and previously approved in 2005, kept the overall primary contact recreation designated use applied to all waterbodies.

The Tribe's numeric bacteria criteria previously approved by EPA to protect the recreation designated use consisted of a geometric mean (GM) of 126 Colony Forming Units (CFU) *E. Coli*/100 ml based upon at least five samples over a 30-day period. When fewer than five samples were collected, a single sample maximum (SSM) value, never to be exceeded, was used based upon frequency of use. These values were as follows: 235 CFU *E. Coli* /100 ml SSM for high-intensity use, 299 CFU *E. Coli* /100 ml SSM for moderate-intensity and 940 CFU *E. Coli* /100 ml SSM for infrequent use. These values were consistent with EPA's 1986 bacteria criteria recommendations, which contained four different SSM values corresponding to the 75th, 82nd, 90th, and 95th percentiles of the expected water quality sampling distribution at the GM criteria value. At the time, EPA recommended using different SSM values based on the use intensity of the recreational water.

In 2012, EPA updated its bacteria criteria recommendations and determined that treating the SSM as a never-to-be-exceeded value would impose a level of protection much more stringent than intended by the 1986 criteria GM value. EPA also indicated that use of a GM alone is not sensitive enough to detect spikes in pathogen concentration. Other areas referenced in the Recreational Water Quality Criteria document (820-F-12-058), that necessitated a revision to the Tribe's bacteria criteria were that magnitude, duration and frequency statements should also be included along with updated bacteria criteria values. Magnitude is expressed as the GM along with a Statistical Threshold Value (STV). The duration statement was set at 30-days and the frequency of exceedance was set at no greater than a 10% excursion over the 30-day period.

During its triennial review, the Tribe updated its bacteria criteria by deleting all previously approved criteria and associated SSM values, and replacing them with one value, a monthly geometric mean of 126 CFU *E. coli*, along with a STV of 410 CFU *E. coli*/100 ml, and a frequency of exceedance of no more than 10% in a 90-day period. According to the EPA Recreational Water Quality Criteria document (820-F-12-058), EPA considers a 30-day duration period as optimal for both the GM and the STV; however, the 90-day duration period is considered scientifically defensible, as well, due to the following:

- The epidemiological studies used for the development of the 2012 bacteria criteria were conducted over a span of 90 days;
- EPA analyzed short-term variability in both GM and STV data from high concentration releases and determined that the attainment assessment outcomes were in substantial agreement using either a 30-day or 90-day duration (EPA 2015).

The Tribe keeps a notation in the WQS submittal, at the bottom of page 22, of a beach action value (BAV) of 235 CFU *E. coli* per 100 ml as a single sample maximum that must not be exceeded for the purpose of issuing beach advisories. Because the Tribe does not intend the BAV to be a WQS, EPA's approval of the Tribe's bacteria criteria does not extend to the BAV. According to the EPA Recreational Water Quality Criteria document (820-F-12-058), the BAV is not a component of EPA's recommended criteria, but a tool that states/tribes may choose to use. While the GM and STV are the applicable WQS for protection of human health during recreation within the Tribe's jurisdiction, a BAV may be used, at the Tribe's discretion, as a more conservative and precautionary tool for decisions about management of the Tribe's beaches.

- ❖ **EPA NO ACTION:** EPA is taking no action on deletion of the three subcategories of primary contact recreation designated use, deletion of the previously approved bacteria criteria based upon frequency of use, and the updated bacteria criteria with the understanding that the Tribe intends to withdraw these items and resubmit them to EPA with the following corrections and clarifications:
  - The GM of 126 CFU *E. coli* is missing the "per 100 ml." The missing language will be added.
  - The GM is listed as a "monthly" value. The Tribe will change to a 90-day duration period rather than a 30-day duration period.
  - Clarification will be provided that the duration period for both the GM and STV is 90 days.



- The deleted subcategories of the primary contact designated use based upon frequency of use, and the deletion of the associated criteria should be resubmitted to EPA along with the corrected bacteria criteria. Until the new bacteria are resubmitted and approved by EPA, the old designated uses and criteria previously approved by EPA are the applicable criteria for CWA purposes.
- The Tribe should also check to ensure that the three subcategories of primary contact use previously approved in the Tribe's WQS, Table 1, as D1, D2, D3 and applied to various waterbodies are corrected to correspond to the single primary contact use.

No further mention of the bacteria criteria will occur in the remainder of this review document.

**3. Nutrient Narrative Criterion** – EPA's approval action only extends to items defined as WQS. "Water Quality Standards are provisions of state, territorial, authorized tribal or federal law approved by EPA that describe the desired condition of a waterbody or the level of protection or mandate how the desired condition will be expressed or established for such waters in the future" (EPA 2017). Each of the two nutrient criteria components were analyzed using EPA guidance on "What is a Water Quality Standard?" Section A. Policy and Scope met the criteria for a WQS as well as Section B. Narrative Criterion. EPA is taking action on these two components as discussed in the following paragraphs.

Section A. Policy and Scope is a new introductory provision as follows: *"Nutrient monitoring data are used as an assessment tool for interpreting the narrative criterion for lakes, rivers, and wetlands within the exterior boundaries of the Reservation. The nutrient assessment tools are derived from data which reflects the natural condition of the Reservation waters and represents a direct measure of the support for aquatic life use designations for Grand portage lakes, rivers and wetlands. The criterion will be used to assess attainment of designated uses, prioritize abatement projects and inform 401 certifications."*

Section B. Narrative Criterion includes a sentence from the initial approved set of the Tribe's WQS: *"Waters must be free from nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae."* Additional new information is added as follows: *"Nutrient concentrations in surface waters must not be altered so as to cause an imbalance in natural populations of aquatic flora or fauna, or; impair the maintenance or attainment of designated uses."*

The Tribe intends to keep its data and assessment procedures in guidance rather than rule and may establish numeric thresholds based upon natural condition for interpretation of the narrative nutrient criterion when needed for implementation activities. The natural condition of the Tribe's waters is described in Section XIII. 1. *Natural Water Quality*. This concept is consistent with one of EPA's options for narrative criteria involving a "translator" for the narrative criteria. This approach translates the general narrative statement into specific numbers upon which regulatory actions may be taken. The translator approach for narratives was mainly intended for priority toxic pollutants, but it can also be applied to non-priority pollutants as well. Consistent with EPA's review and comments during the public comment period, the Tribe intends to gain experience using this approach for this triennial review and, in the future, will move towards codification of numeric values in rule. The introductory language in Section A and the narrative criterion in Section B is consistent with EPA's guidance on narrative criteria.

- ❖ **EPA APPROVAL ACTION:** EPA approves the nutrient criterion based upon the regulatory requirement at 131.11(b)(2): "...In establishing criteria, States should establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria."

**4. Biological Narrative Criterion** - Biological criteria may be narrative statements or numerical values. Because surface waters vary significantly within regions, EPA guidance discusses acceptable approaches for biological criteria development rather than specific criteria with numerical limitations (EPA 1990). States/tribes can establish general narrative biological criteria early in program development without conducting biological assessments. Once established in state/tribal standards, narrative biological criteria form the legal and programmatic basis for expanding biological assessment and bio survey programs needed to implement narrative criteria and develop numeric biological criteria. The Tribe has chosen to include an expanded narrative criterion along with a description of general assessment procedures.

The Tribe removed the following paragraph from their WQS regarding biological quality: "*The biological quality of any given surface water body will be assessed by comparison to the biological integrity of reference conditions which best represent the most natural condition for that surface water body type within the geographic region. The biological quality will be determined by reliable measures of indicative communities of flora and fauna.*" The language removed is replaced with an expanded version in Section 5.1 *Biological Criteria* that includes three parts: A. *Policy and Scope*, B. *Narrative Criterion* and C. *Implementation*.

The revised Biological Criteria in Section A. *Policy and Scope* and Section B. *Narrative Criterion* is as follows:

*A. Policy and Scope.*

*Biological monitoring data are used as an assessment tool for interpreting the narrative criterion for lakes, rivers, and wetlands within the exterior boundaries of the Reservation to identify water quality problems and prioritize abatement projects. The biological assessment tools are derived from data which reflects the natural condition and represent a direct measure of the support for aquatic life use designations for Grand Portage lakes, rivers, and wetlands.*

*B. Narrative Criterion.*

*Reservation waters shall be free from substances in concentrations or combinations that would adversely alter the structure and function of aquatic communities, as defined by the un-impacted natural condition. Water quality shall be maintained to support aquatic life designated uses.*

EPA's approval action only extends to items defined as WQS. Similar to the analysis carried out on the nutrient criteria above, EPA determined that Section A. *Policy and Scope* and Section B. *Narrative Criterion* are WQS requiring action by EPA. EPA finds the Tribe's revisions based upon the natural condition (previously approved Section XIII. 1. *Natural Water Quality*) to be consistent with EPA biological criteria guidance emphasizing that narrative criteria should include specific language about aquatic community characteristics that should exist in a



waterbody to meet aquatic life designated uses, are quantifiable and should promote water quality to protect the most natural community possible for the designated use. (EPA 1990).

The third section, C. *Implementation* is not considered a WQS because it focuses on a general description of various parameters and indices that the Tribe will use when assessing Reservation waters. This section can mainly be considered to require sampling and analysis techniques that are consistent with Grand Portage methods and standard operating procedures:

*"C. Implementation.*

*The biological quality of any given surface water body will be assessed by comparison to the biological conditions determined to be the natural condition for that surface water body. In all cases sampling and analysis techniques shall be used that are consistent with Grand Portage methods and standard operating procedures.*

*Functional and structural attributes of vegetation and macroinvertebrate communities will be used in conjunction with habitat quality and chemical data to determine the degree to which a waterbody is fully, partially or not supporting its designated aquatic life uses. A finding of biological degradation must be supported by data for the factors listed below:*

*(1) The resident aquatic macroinvertebrate community will be evaluated based on an index of biological integrity calculated from measurements of attributes of:*

- (a) species diversity and composition;*
- (b) feeding characteristics; and*
- (c) species abundance and condition;*

*(2) The resident aquatic plant community will be evaluated based on an index of biological integrity calculated from measurements of attributes of:*

- (a) species diversity and composition, including algae; and*
- (b) species abundance and condition;*

*3) Habitat quality will be evaluated based on a quantitative or qualitative assessment of:*

- (a) river and lake morphological features that provide spawning, nursery, and refuge areas for fish and invertebrates;*
- (b) bottom substrate size and variety;*
- (c) variations in water depth;*
- (d) sinuosity of a river course;*
- (e) physical or hydrological alterations of the stream or lake bed including excessive sedimentation;*
- (f) types of land use in the sub-watershed; and*
- (g) other scientifically accepted and valid factors of habitat quality."*

- ❖ **EPA APPROVAL ACTION:** EPA approves the biological criteria in sections A and B based upon the regulatory requirement at 131.11(b)(2): "...In establishing criteria, States should establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria."

- ❖ **EPA NO ACTION:** EPA takes no action on section C. *Implementation* based upon EPA analysis that the section is not a WQS.

### C. State/Tribe Review and Revision of WQS

**Table 1. Regulatory Requirements for Review and Revision of WQS under 40 CFR 131.20.**

Review and Revision of WQS	Grand Portage Triennial Review Submission
<i>State review.</i> The State shall hold public hearings at least once every 3 years for the purpose of reviewing applicable WQS, and as appropriate, modifying and adopting standards. (40 CFR 131.20(a))	The Tribe is completing its second triennial review since receiving EPA approval of the Tribe's initial set of WQS on November 2, 2005. The Tribe is located within the Great Lakes basin; therefore, the triennial review submittal must comply with the applicable regulations at both 40 CFR Parts 131 and 132. The Tribe worked with EPA on the triennial review spanning from 2015 to 2017, and has requested approval of ammonia criteria, nutrient criteria and biological criteria.
<i>Public participation.</i> The State shall hold one or more public hearings for the purpose of reviewing WQS as well as when revising WQS in accordance with provisions of State law and EPA's public participation regulation (40 CFR 25). The proposed WQS revision and supporting analyses shall be made available to the public prior to the hearing. (40 CFR 131.20(b))	<p>The Tribe published a notice in the Cook County News Herald of a 45-day public review/comment period on the triennial review and the subsequent public hearing scheduled for March 14, 2017. The notice was published January 28, February 4, 11, 18, 25 and March 4, 2017 and allowed for written comments to be submitted for consideration.</p> <p>On January 27, 2017, the Tribe also emailed other Great Lakes States/Tribes to solicit triennial review comments and recommendations, and posted the triennial review information on the 1854 Treaty Authority website.</p> <p>A public hearing was held on March 14, 2017 and no one attended the public hearing. EPA submitted written comments to the Tribe.</p>
<i>Submittal to EPA.</i> The State/Tribe shall submit the results of the review and supporting analysis to the Regional Administrator for review and approval within 30 days of final State/Tribe action to adopt and certify the revised standards. (40 CFR 131.20(c))	The Grand Portage Reservation Tribal Council's resolution #06-17 to adopt the revised WQS under tribal law is dated April 19, 2017. The legal certification from Sara K. Van Norman is dated April 27, 2017. The submittal letter containing the resolution and certification was received by EPA on May 9, 2017. The Tribe met the requirement to submit the triennial review within 30 days of the final tribal action to adopt and certify the revised WQS.



**D. Applicable Requirements from “EPA Authority” at 40 CFR 131.5 and 40 CFR 132.4 “State Adoption and Application of Methodologies, Policies and Procedures”, as well as all “Minimum Requirements for WQS Submission” at 40 CFR 131.6**

**Table 2. WQS requirements for submission at 40 CFR Parts 131.5, 131.6 and 132.4.**

WQS Requirements	Grand Portage Triennial Review Submittal
Use designations consistent with the provisions of CWA sections 101(a)(2) and 303(c)(2). <b>(40 CFR 131.5(a)(1) and 131.6(a))</b>	Based upon the Tribe’s decision to withdraw revisions to its recreation use and bacteria criteria, as discussed above in Section III. B. 2, there are no designated use changes within the Grand Portage triennial review. All previously approved designated uses are consistent with CWA requirements.
The State has adopted criteria that protect the designated uses based on sound scientific rationale consistent with 40 CFR 131.11 Criteria. <b>(40 CFR 131.5(a)(2))</b>	As stated in more detail above in Section B of this review document, the Tribe has adopted EPA’s recommended 304(a) numeric ammonia criteria based upon the regulatory requirement at 131.11(b)(1)(i): “.... In establishing criteria, States should establish numerical values based on 304(a) Guidance;....” The narrative nutrient and biological criteria are adopted consistent with the regulatory requirement at 131.11(b)(2): “.... In establishing criteria, States should establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.”
The State has followed applicable legal procedures for revising or adopting standards. <b>(40 CFR 131.5(a)(6))</b>	The Tribe’s legal procedures for revising and adopting WQS involve governing body approval by resolution from the Grand Portage Reservation Tribal Council. The Tribal Council passed resolution #06-17 titled “Adopting Ammonia, Biological, Nutrient, and Revised Recreational Criteria for Grand Portage Water Quality Standards.” The Tribe’s legal counsel reviewed the Tribe’s Constitution and By-Laws, its Natural Resource Ordinance and Resolution #06-17 and provided the opinion that the Tribe’s amended WQS were duly adopted in accordance with the law of the Tribe and other authority. The Tribal Council was authorized under tribal law to pass the resolution. The new standards, when approved by EPA, will constitute the law of the Tribe.
The State’s submission meets the requirements included in 40 CFR 131.6 and, for Great Lakes States/Tribes to conform to section 118 of the CWA, the requirements of 40 CFR 132. <b>(40 CFR 131.5(a)(8))</b>  For pollutants listed in Table 5 of this part, the Great Lakes States and Tribes shall: (1) Apply any methodologies and procedures acceptable under 40 CFR 131 when developing water quality criteria or implementing narrative criteria. <b>(40 CFR 132.4(g)(1))</b>	The Tribe’s submission meets all minimum requirements of 40 CFR 131.6 as stated in the following rows of this table.  The only applicable item from the Great Lake Guidance at 40 CFR 132, is to address the ammonia requirements as pollutants listed under Table 5 of the Guidance. The Guidance requires application of methodologies and procedures acceptable under 40 CFR 131 when developing water quality criteria or implementing narrative criteria. The Tribe’s adoption of EPA’s latest CWA 304(a) ammonia criteria is consistent with the Great Lakes Guidance requirements for this pollutant.

WQS Requirements	Grand Portage Triennial Review Submittal
<p>Methods used and analyses conducted to support WQS revisions. (40 CFR 131.6(b))</p>	<p><i>Ammonia:</i> The Tribe adopted EPA's recommended ammonia criteria without modification; therefore, no additional methods or analyses were expected from EPA along with the submittal.</p> <p><i>Biological:</i> The biological criteria were submitted as narrative criteria along with general assessment procedures that were not considered WQS by EPA.</p> <p><i>Nutrient:</i> The nutrient criteria were accompanied by a tribal supporting information document. The Tribe decided to streamline the nutrient criteria after the public comment period to reflect a cooperative plan with EPA for future work on numeric nutrient criteria.</p>
<p>Water quality criteria sufficient to protect the designated uses. (40 CFR 131.6(c))</p>	<p>The Tribe's previously approved designated uses of aquatic life, wildlife, recreation and wild rice will be supported by the newly adopted numeric ammonia criteria, as well as the narrative nutrient and biological criteria. The criteria will support protection of the designated uses is more thoroughly discussed in Section B of this review document and as highlighted below:</p> <ul style="list-style-type: none"> <li>*Ammonia criteria will provide additional protection for aquatic life such as fish, mussels, snails and invertebrates.</li> <li>*Nutrient narrative criteria will be used to protect Reservation waterbodies in their un-impacted natural condition. This will be beneficial to the wild rice, recreation and aquatic life designated uses. Wild rice is an important cultural food item for the Tribe and nutrients often play a role in the successful propagation of wild rice.</li> <li>*Biological narrative criteria will support the aquatic life designated use by maintaining Reservation waterbodies in un-impacted natural condition.</li> </ul>
<p>An antidegradation policy and implementation methods consistent with §131.12 (40 CFR 131.6(d))</p>	<p>Not applicable. There are no revisions to the Tribe's previously approved antidegradation policy.</p>
<p>Certification by the State Attorney General or other appropriate legal authority within the State that the WQS were duly adopted pursuant to State law. (40 CFR 131.6(e))</p>	<p>In a letter to Chris Korleski, dated April 27, 2017, the Tribe's legal counsel, Sara K. Van Norman, of The Jacobson Law Group certified the triennial review and adoption of the ammonia, bacteria, nutrient and biological criteria under tribal law.</p>
<p>General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include uses specified in section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation. (40 CFR 131.6(f))</p>	<p>The information submitted by the Tribe is described above under "Submittal History". A more detailed analysis of the basis for EPA final action on the triennial review criteria is provided in Section B above.</p>



#### IV. Areas Affected and Environmental Impacts

The Grand Portage Reservation lies in the extreme northeastern tip of Cook County, Minnesota. The Canadian province of Ontario provides the Reservation's northern boundary. The western boundary is State and Federal forest. Lake Superior forms the rocky, wave-swept boundary on the south and east.

The Reservation contains 56,000 contiguous acres and is located entirely within the Great Lakes Basin. The Tribe's 42 miles of perennial and 55 miles of intermittent streams flow through the Reservation and drain into Lake Superior. There are seventeen inland lakes that collectively comprise approximately 816 acres and about 7,204 acres of wetlands within the Reservation boundaries.

Environmental Impacts to aquatic life, human health and wildlife are described below:

- **Aquatic Life:** The Tribe has adopted EPA's 2013 ammonia criteria which reflects new data on sensitive freshwater mussels and snails. EPA's acute ambient water quality criteria for protecting freshwater organisms from potential effects of ammonia is 17 mg/L total ammonia nitrogen (TAN) and the final chronic criterion for ammonia is 1.9 mg/L TAN at pH 7.0 and temperature 20 °C. The Tribe also includes tables of the criteria values at different temperature and pH values for ease of stakeholder use. EPA's acute criteria equations (one for when *Oncorhynchus* species are absent) are expected to protect aquatic organisms from immediate effects, such as mortality. The chronic criterion is also included in the triennial review submittal to protect against the long-term effects of ammonia on reproduction, growth and survival of aquatic organisms. Although the Tribe has no industrial or agricultural sources of ammonia within Reservation boundaries, there is one wastewater treatment facility that may be subject to ammonia limits in the future. The addition of ammonia criteria is expected to have beneficial impacts to aquatic life.

The narrative biological and nutrient criteria do not yet have associated numerical values, but are based upon the Tribe's desire to maintain the un-impacted natural condition of Reservation waters. The narrative criteria are expected to have a positive impact on aquatic life because the criteria provide a legal basis for translating the narrative criterion into numeric values for implementation activities, if necessary.

- **Human Health:** EPA is not taking action on the Tribe's bacteria criteria so there are no impacts to human health to assess at this time.
- **Wildlife:** The Tribe's triennial review submittal does not modify any of the previously approved wildlife criteria so there will be no impacts to fish-eating wildlife such as birds and mammals.

#### V. ESA Requirements

As required under section 7 of the ESA and federal regulations at 50 C.F.R. Part 402, EPA is required to consult with FWS on any action taken by EPA that may affect federally-listed threatened or endangered species or their critical habitat.

The northern long-eared bat is the only federally-listed aquatic, aquatic-dependent, or wetland species found on the FWS website for Cook County, Minnesota at <https://www.fws.gov/midwest/endangered/lists/minnesot-cty.html> (Revised March 21, 2017):

Common and Scientific Name	Status	Habitat
Northern long-eared bat ( <i>Myotis septentrionalis</i> )	Threatened	Hibernates in caves and mines, swarming in surrounding wooded areas in autumn. During summer, roosts and forages in upland forests.

EPA determined that approval of the narrative nutrient and biological criteria revisions will have no effect on the northern long-eared bat due to the following:

- The revised narrative nutrient and biological criteria further clarify the Tribe's desired level of protection to support aquatic life designated uses, and detail their plans to assess attainment of the narrative standards; therefore, there are no effects on northern long-eared bat based upon the narrative language. Should the Tribe ever need a numeric value for implementation activities such as a National Pollutant Discharge Elimination System (NPDES) permit, that value would need to undergo consultation between EPA and FWS during the NPDES permitting process because EPA remains the permitting authority for the Tribe.

EPA approves the Tribe's ammonia criteria subject to successful completion of section 7 consultation with FWS under the ESA. EPA developed a biological evaluation to support approval of the ammonia criteria equations and values based upon a "may affect, but is not likely to adversely affect" determination for the northern long-eared bat due to the following:

- The Tribe adopted ammonia criteria consistent with EPA's updated 2013 ammonia criteria recommendations. These criteria are expected to have beneficial impacts on potential prey items of the northern long-eared bat because the criteria were developed, in part, to protect emergent aquatic insects that may comprise part of the bat's diet. EPA determines the indirect impact of approval of the ammonia criteria may affect, but is not likely to adversely affect the northern long-eared bat.
- No other impacts to northern long-eared bat are expected, especially related to important hibernacula and roost trees. EPA used the following FWS online site [http://files.dnr.state.mn.us/eco/ereview/minnesota\\_nleb\\_township\\_list\\_and\\_map.pdf](http://files.dnr.state.mn.us/eco/ereview/minnesota_nleb_township_list_and_map.pdf) to verify by legal description that the three locations for hibernacula and roost trees in Cook County, Minnesota do not occur within the Grand Portage Reservation boundaries.

## **VI. Tribal Consultation Requirements**

On May 4, 2011, EPA issued the "EPA Policy on Consultation and Coordination with Indian Tribes" to address Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The EPA Tribal Consultation Policy states that "EPA's policy is to consult on a government-to-government basis with federally recognized tribes when EPA actions and decisions may affect tribal interests." EPA reviewed the locations of other tribal lands near the Grand Portage Reservation and determined that the Red Cliff Band of Lake Superior Chippewa was the only other Great Lakes Coastal Tribe to consider. The Red Cliff Band, however, is over 100 miles southwest over Lake Superior from the Grand Portage Reservation. EPA concludes



that the triennial review revisions for ammonia criteria, nutrient and biological criteria will have no impact on the Red Cliff Band due to the distance between the two jurisdictions.

## **VII. Conclusion of EPA's Review**

The analysis in Sections I. through VI. above allows EPA to conclude that the Tribe's triennial review is consistent with the requirements of the CWA and ESA statutes, the regulatory requirements at 40 CFR Parts 131 and 132, and the EPA Policy on Consultation and Coordination with Indian Tribes. EPA approves the Tribe's triennial review and WQS additions and revisions.

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